STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	)	
	)	00-0259
Petition for Expedited Approval of	)	
Implementation of a Market-Based	)	
Alternative Tariff, to become effective	)	
on or before May, 2000, pursuant to Article	)	
IX and Section 16-112 of the Public	)	(Cons.)
Utilities Act.	)	
	)	
Central Illinois Public Service Company	)	
Union Electric Company	)	00-0395
	)	
Petition for Approval of Revisions to	)	
Market Value Tariff, Rider MV	)	
	)	
Illinois Power Company	)	
	)	
Proposed New Rider MVI and Revisions	)	00-0461
Revisions to Rider TC	)	

NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, November 22, 2000, we have filed with the Chief Clerk of the Illinois Commerce Commission the enclosed Reply Brief of The People of The State of Illinois via e-docket to the Chief Clerk of the Illinois Commission at 527 East Capitol Avenue, Springfield, Illinois 62794-9280.

____
Mark G. Kaminski
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Mark G. Kaminski, Assistant Attorney General, hereby certify that I served the above identified documents upon all active parties of record on the attached service list by United States Mail, first class postage prepaid on November 22, 2000, and by electronic mail to all active parties.

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REPLY BRIEF OF THE PEOPLE OF THE STATE OF ILLINOIS

Comes now the People of the State of Illinois, by James E. Ryan, Attorney General of Illinois (hereinafter "People" or "AG"), and, for their Reply Brief in the above captioned cause, file the following.

INTRODUCTION

The central issue in this docket is whether or not the proposed Market Value Index (hereafter "MVI") tariffs will best serve the competing goals of securing competition in the electricity market, ensuring stranded cost recovery and improving upon the neutral fact finder (hereafter "NFF") process. To accomplish those goals, the Commission must not merely pick one of the proposals before it, or approve all of them as is. Rather, the Commission must determine the best characteristics of each proposal, and approve an MVI tariff that is best suited for all of Illinois. Staff believes that the Commission should require modifications to the proposed tariffs only where modifications are deemed absolutely necessary, perhaps out of concern that the utilities would reject the modifications pursuant to Section 16-112(m) of the Act.[1] The Commission should not let Staff's concern prevent it from approving a proper MVI tariff.

REPLY TO COMMONWEALTH EDISON

The People's Initial Brief raised concerns regarding liquidity and possible manipulation of the Into-ComEd market[2], and fully set forth their arguments therein as to why the Commission should require ComEd to use the Into-Cinergy market. People's Initial Brief at 6. Those arguments will not be repeated here. However, three points will be discussed.

First, ComEd asserts that any concerns regarding manipulation are speculative and unlikely to occur (*See generally*, ComEd Initial Brief at 10, *et seq.*). Even if the Commission accepted ComEd's "unlikely to occur" position, it must keep in mind that, however unlikely, the possibility of manipulating the Into-ComEd market does exist, and the potential chilling effect it could have on competition is very real. Consumers must have confidence that the market value for electric power and energy was arrived at fairly. Considerations concerning the appearance of impropriety, a principle that strengthens the general public's trust in the regulatory process, are

[1] 220 ILCS 5/16-112(m).

[2] On November 22, 2000, the People were informed by ComEd's attorney that the Into-ComEd screen on the Bloomberg PowerMatch Exchange was removed. There was no indication as why this happened or how long the screen would be missing. ComEd's attorney indicated that this information would be given to the Hearing Examiner and the other parties.

very appropriate in this docket. There is no need to use a market hub, *i.e.*, Into-ComEd, that could be subjected to the undo influence that ComEd could bring to bear,[3] when a superior alternative, *i.e.*, Into-Cinergy[4], is available. The People urge the Commission to require all utilities to use the Into-Cinergy market for collection of market price data used in the determination of the market value of electric power and energy in Illinois.

Second, ComEd's Initial Brief maintains "...that the liquidity of the Into ComEd hub has substantially increased and is expected to continue to increase...." ComEd Initial Brief at 10. This optimistic view appears suspect, given the testimony of Ameren witness Eacret:

> According to PowerTrax, for the period September 1, 1999 through August 31, 2000 an average of approximately 94 daily 50-MW contracts traded at the Cinergy hub each day. During the same period, an average of 6 daily 50-MW contracts traded at the ComEd hub each day.

Ameren Ex. 4.0, p. 6. The People believe that, regardless of ComEd's assertions, the number of actual daily trades clearly indicates that the Into-ComEd market is not sufficiently liquid to support its use in determining the market value in ComEd's service area. Therefore, the People urge the Commission to require all utilities to use the Into-Cinergy market for collection of market price data used in the determination of the market value of electric power and energy in Illinois.

Third, in its Initial Brief, ComEd discussed its proposal to limit interaction between ComEd traders and clerks taking screen prints. ComEd Initial Brief at 15. That limited

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[3] *See, e.g.*, People's Initial Brief at 6.

[4] Ameren witness Eacret testified that Into-Cinergy is "...one of the most liquid hubs in the country...." Ameren Ex. 4.0, p. 6.

interaction was intended to alleviate manipulation concerns. However, the appearance of impropriety is still present. ComEd did state that it would not be opposed to a neutral third party collecting the raw data used for the determination of the market value of electric power and energy. ComEd Initial Brief at 16. Given ComEd's acquiescence to a third party collector, the People believe that using a third party for raw data collection would better address the appearance of impropriety issue. The Commission is urged to revisit the People's Third Party Data Collector proposal, People's Initial Brief at 9, and require its adoption.

REPLY TO ILLINOIS POWER

IP maintains that its twelve month rolling average market value collection method is superior to Ameren and ComEd's Applicable Period A/Applicable Period B methodology. First, IP asserts that customers would have sufficient time, *i.e*., between eight and sixteen days, to decide between staying with bundled service and switching to a PPO or an alternative supplier. *See generally*, IP Initial Brief at 26, *et. seq.* IP lists several reasons why this short time period is adequate, including, for example, that "...any ARES or customer can follow the market trends and have a fairly good idea of what the next month's market values, and hence TC's, will be before they are actually published." IP Initial Brief at 29. IP assumes a sophistication and availability of resources that not all of its customers can have.[5] The odds against a small non-residential customer, such as a mom and pop grocery store, having the wherewithal to follow and understand

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[5] Having access to Altrade and Bloomberg data comes with a initial fee of $75,000.00 and a monthly update fee of $5,250.00. See, People's Initial Brief at 8. This exorbitant cost is an effective barrier to the "widely-available sources" (IP Initial Brief at 29) that IP offers to mitigate the limited decision time under its methodology, and, hence, an economic barrier to competition.

market trends are tremendous. It is incredibly naive of IP to suggest otherwise. Time[6] becomes a critical factor not only in deciding when to switch from bundled service, but in deciding whether a switch is advantageous. Time will necessarily be needed to encompass a learning curve.[7] IP's proposal does not take this into consideration.[8] Therefore, given that IP has not provided any persuasive reasons for its short decision period, the longer Applicable Period A/B time period should be used.

Second, IP claims that "keeping the market values constant for an entire twelve month period for those customers who select choice in any given month is an improvement over the NFF and the A/B method ...." IP Initial Brief at 27. Apparently IP does not understand that Applicable A is twelve months long. Applicable B, the so-called "on-ramp"period, could be as long as nine months, but when the next Applicable Period A occurs, the customer will automatically begin using Applicable Period A numbers for calculating CTCs. Therefore, the constant market value advantage IP was associating with its twelve month duration methodology

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[6] IP witness Peters agreed that it may be reasonable for a customer to need two weeks or more to review ARES and PPO offers, select one and then negotiate and approve the final terms of a contract. Tr. 289, line 2. IP witness Jones stated, "Some customers may take longer than others, yes." Tr. 298, line 8.

[7] IP witness Jones agreed that it is possible that customers will have a learning curve in this new environment. Tr. 297, line 9.

[8] To illustrate that customers do not need to know the market value in advance of making an electric purchase decision, IP offered the Master Power Purchase Agreement between CILCO and the Illinois Electric Consortium ("IEC"). However, this agreement is inapposite in that it is not analogous to non-residential customers making electric purchase decisions involving PPO market values determined via a market index-based tariff. Rather, the IEC Agreement involved a consortium of state institutions that were currently under the NFF. Additionally, just because the IEC elected to act without knowledge of the market value of electricity does not mean that all non-residential customers in IP's service territory would elect to act, or even have the ability to elect to act, similarly.

is non-existent.

Third, IP claims that "[a]s the amount of time between data collection and effective dates lengthens, customers and ARES receive a *free option* at the utility's expense...." IP Initial Brief at 28, emphasis added. Futher, IP states: "...[in] creating a truly competitive market for electricity in Illinois ... all parties must become more accustomed to acting as they do in other competitive markets, where all parties bear a share of the risk, rather than seeking to place the costs on the incumbent utility and the benefits on the new entrants." IP Initial Brief at 30. Apparently, IP believes that, during the mandatory transition period, it is a competitor in its own service territory. That is simply not true. If a customer chooses to take delivery services, the General Assembly protected the utility's capital investment, that is, stranded costs, by allowing the utility to collect CTCs. But, if the utility chooses to collect CTCs, the utility must also offer that customer a PPO.[9] The utility is not a competitor in its own service territory until after the mandatory transition period. Regardless of what a customer decides to do, the utility has been given a mechanism to protect, that is recover, its investments. IP's arguments regarding risk management are better suited for an entity that is permitted to directly compete in a market for the provision of electric power and energy. Therefore, IP does not have a competitive stance in the market to be prejudiced by this so called "free option".

In order to create a truly competitive market for electricity in Illinois, the market will have to be attractive to new entrants. Recognizing that incumbent utilities enjoy an overwhelming market share, the General Assembly created a mandatory transition period that is purposefully designed to allow the entrance of alternate suppliers into the market while preventing direct utility

[9] 220 ILCS 5/16-110(b).

competition within its own service territory until the transition period is ended. If IP is permitted to compress the time in which customers have to evaluate their power purchase opportunities, alternate suppliers will not be able to establish a foothold in the market. Therefore, IP will gain a competitive advantage the General Assembly was clearly attempting to avoid.

IP argues, "...with respect to those customers whose TC falls to zero when the market value is re-set, we note that this is already a potential problem under the NFF process...." IP Initial Brief at 35. The People disagree that re-setting market value under an MVI tariff results in the same potential problem as under the current NFF process. The record evidence is clear that market values under an MVI methodology will, generally speaking, be very different than the values arrived at by the NFF. It seems abundantly reasonable that a customer that is currently subject to a PPO made that choice based on the then current NFF market values and the anticipated NFF market values in January 2001. To unilaterally dissolve a PPO contract based upon market values with a completely different genesis ignores assumptions made at contract inception. Therefore, the People propose the following compromise. If a customer's CTC falls to zero as a result of the MVI methodology, but would not have done so under the NFF market values, that customer's PPO should remain effective. If the CTC would have also fallen to zero under the NFF, then the PPO service could be terminated. The People urge the Commission to consider their compromise.

REPLY TO STAFF

Staff recommends that the Commission approve both the ComEd/Ameren Applicable Period A/Applicable Period B methodology <u>and</u> the IP twelve month methodology. Staff Initial Brief at 58. The People find that this recommendation is not supported by Staff's own analysis.

Staff acknowledged the short time frame IP customers would have to decide between bundled service, PPO and alternative supplier's offers by stating, "IP's rolling 12-month approach requires RESs and some customers to really hustle in order to evaluate their options after each MV and CTC update." Staff Initial Brief at 57. Staff further opined, "IP has apparently convinced itself that it would be severely disadvantaged by an Applicable Period A/B approach or any alternative approach that would give customers more time to consider their options." *Id*. According to Staff, IP believes the Applicable Period A/B approach would prejudice its receipt of "...the maximum allowable transition charges to which IP fervently believes it is entitled." *Id.* at 58. Even though Staff asserts that "...IP is being excessive..." (*Id.*), it, nonetheless, recommends the Commission approve IP's methodology.

The People believe that Staff may be placing too much emphasis on IP's stated unwillingness to accept certain modifications to its proposed tariff[10] rather than support what will be best for the development of electricity competition throughout Illinois. Specifically, Staff fails to acknowledge the additional barrier to entry that IP's proposal imposes on alternative suppliers wishing to solicit customers in its service area. *See*, Reply to IP, above. Neither Staff nor IP has demonstrated that this impediment to competition is necessary. Staff also fails to acknowledge the undue burden placed upon IP's customers by IP's restrictive decision window as compared to customers in the Ameren and ComEd service areas. There is no record evidence showing that Illinois customers who just happen to be in IP's service territory should be subjected to IP's restrictive decision window. Therefore, the Commission should not approve the twelve month

[10] IP listed changes that it was not willing to make in its Initial Brief at 4. The list included the twelve month methodology.

rolling method.

Staff stated in its Initial Brief that it "...cannot argue with IP's claim that the tighter the timing, the more 'accurate' the representation of market value." Staff Initial Brief at 58. However, there is no indication that Staff analyzed the accuracy of IP's "timing." *Id*.

First, predictions regarding future events become more accurate as they get closer to the event itself. In the Illinois electricity market, the summer period is the most volatile period of the year. Accordingly, accurate summer market values are difficult to predict. The majority of IP's twelve month snapshots contain estimates of the summer period that are much less tight, time-wise, than the Applicable Period A snapshot employed in the ComEd/Ameren proposals.[11]

Second, IP's tighter timing is based upon half as many days of data capture as the Applicable Period A/B methodology. The ComEd/Ameren method allows for data collection over a twenty day period, as opposed to IP's ten day retrieval period. Clearly, a larger base of information upon which to determine the market value of power and energy in Illinois will provide a more accurate representation of that market value.

Again, the People believe that Staff may be placing too much emphasis on IP's stated unwillingness to accept certain modifications to its proposed tariff rather than support what will be best for the development of electricity competition throughout Illinois. Again, the Commission should not approve IP's twelve month methodology.

[11]For example: IP's October snapshot would occur roughly five months before the Applicable Period A snapshot, and seven months before the start of the volatile summer period.

WHEREFORE, the People of the State of Illinois, respectfully request the Commission approve an MVI tariff that is consistent with this Reply Brief and the People's Initial Brief..

Respectfully submitted,

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